

(2016) 07 KL CK 0034

High Court Of Kerala

Case No: Writ Appeal No. 732 of 2016 (Appeal against the Judgment of Mr. Justice B.P. Ray in W.P. (C) No. 11885 of 2008).

Kerala State Electricity Board -
Appellant @HASH Precot
Meridian

APPELLANT

Vs

RESPONDENT

Date of Decision: July 14, 2016

Acts Referred:

- Limitation Act, 1963 - Section 5

Citation: (2016) 4 ILRKerala 732

Hon'ble Judges: P.R. Ramachandra Menon and Anil K. Narendran, JJ.

Bench: Division Bench

Advocate: Sri. P. Santhalingam, Senior Advocate and Sri. S. Sharan (S.C., K.S.E.B.), for the Petitioner; Sri. Anil D. Nair, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Anil K. Narendran, J. - This is an application filed by the Kerala State Electricity Board, the appellant in Un-numbered Writ Appeal of 2016 (ZWA No. 732 of 2016), under Section 5 of the Limitation Act, 1963 seeking an order to condone the delay of 1225 days in re-presenting the Writ Appeal filed against the judgment of the learned Single Judge of this Court dated 2-2-2012 in W.P. (C) No. 11885 of 2008. The appellant filed the said Writ Petition mainly challenging Ext. P-3 order dated 11-1-2007 of the Electricity Ombudsman in Appeal No. 1 of 2006 filed by the respondent herein, a unit engaged in the manufacture and sale of cotton yam, situated at Kanjikode in Palakkad District, a HT-EHT consumer under the Electricity Board with Consumer No. 9/731. The learned Single Judge by the judgment dated 2-2-2012 dismissed the Writ Petition declining interference on Ext. P-3 order of the

Electricity Ombudsman.

2. Feeling aggrieved by the judgment dated 2-2-2012 in W.P. (C) No. 11885 of 2008, the appellant filed the present Writ Appeal on 5-2-2013 with a delay of 335 days.

3. On 16-2-2013 the Registry returned the file noting certain defects and the appellant was granted 15 days" time to cure the defects. The endorsement made by the Registry on 16-2-2013 is extracted hereunder:

"(1) Court Fee not paid.

(2) Not flagged.

(3) Copy not served on opposite side.

Returned-Time 15 days."

4. On 11-7-2016, the appellant re-presented the Writ Appeal after curing the defects, along with C.M. Application No. 732 of 2016 to condone the delay of 1225 days in re-presenting the appeal. The reason for the inordinate delay of 1225 days in re-presenting Writ Appeal, as stated in the affidavit accompanying C.M. Application No. 732 of 2016 sworn to by the Assistant Executive Engineer attached to the office of the Standing Counsel for the Board, reads thus:

"3. As against the judgment of the learned Single Judge Writ Appeal was filed with a delay petition and a petition to condone the delay in re-presenting the Appeal. After the filing of the Writ Appeal the respondent made a further attempt to settle the matter and hence no further proceedings were taken. However, the respondent is now claiming the full benefits granted by the Ombudsman in Ext. P-3 order. It is on account of these reasons that the Writ Appeal was not moved immediately. It is submitted that there is a delay of 1225 days in re-presenting the Writ Appeal. The delay was caused under the aforesaid circumstances and not due to laches or negligence on the part of the appellant."

5. We heard the arguments of the learned Senior Counsel for the appellant.

6. The sole issue that arises for consideration is as to whether the appellant has made out a case for the condonation delay of 1225 days in re-presenting the Writ Appeal after curing the defects noted by the Registry.

7. In **Collector, Land Acquisition v. Katiji, (1987) 2 S.C.C. 107** the Apex Court held that, the legislature has conferred power to condone delay by enacting Section 5 of the Limitation Act, 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice, that being the life-purpose for the existence of the institution of courts.

8. In **Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 S.C.C. 649** the Apex Court summarised the principles applicable while dealing with an application for condonation of delay. Paras. 21 and 22 of the judgment read thus:

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

9. In the instant case the defects noted by the Registry in the Writ Appeal filed with a delay of 335 days are nonpayment of the court fee of Rs. 200; memorandum of appeal not flagged; and copy of memorandum of appeal not served to the opposite side. On 16-2-2013 the Registry returned the file granting 15 days" time to cure the defects. Thereafter, the appellant re-presented the Writ Appeal after curing the defects only on 11-7-2016, with a delay of 1225 days. The reason stated in the affidavit accompanying to C. M. Application No. 732 of 2016 for condonation of the delay of 1225 days in re-presenting the appeal is that, after the filing of the Writ Appeal the respondent made a further attempt to settle the matter and hence no further proceedings were taken. It was on account of that reason that the Writ Appeal was not re-presented immediately. However, the respondent subsequently demanded the full benefits granted by the Electricity Ombudsman in Ext. P-3 order.

10. Once a proceeding. filed before this Court is returned by the Registry for curing defects, it has to be re-presented within a period 15 days, in terms of sub rule (2) of Rule 15 of the" Rules of the High Court of Kerala, 1971. If the said proceedings is re-presented beyond the said period of 15 days due to any delay occurred in curing the defects, the delay upto 15 days can be excused by the Registrar, in exercise of the powers conferred under sub rule (11) of Rule 16 of the said Rules, read with the orders issued by the Chief Justice under Rule 16 fixing the said time-limit. If the

delay is more than that, it can be condoned by this Court in appropriate cases, if the appellant/petitioner has shown "sufficient cause" for the delay in curing the defects" noted by the Registry. Similarly, if the delay in re-presentation has occurred due to some "inadvertent omission" in representing the proceedings, it can be condoned by this Court, if there is "sufficient cause" for the delay.

11. It is well-settled that, the Law of Limitation is founded on public policy to ensure that the parties to a litigation do not resort to dilatory tactics mid seek legal remedy without delay. In an application filed under Section 5 of the Limitation Act, the court has to condone the delay if sufficient cause is shown. Adopting a liberal approach in condoning the delay is one of the guiding principles, but such liberal approach cannot be equated with a licence to approach the court-at-will disregarding the time-limit fixed by the relevant statute. The acts of negligence or inaction on the part of a litigant do not constitute sufficient cause for condonation of delay. Therefore, in the matter of condonation of delay, sufficient cause is required to be shown thereby explaining the sequence of events and the circumstances that led to the delay. In the instant case, same is absent. The reason stated in the affidavit accompanying to C.M. Application No. 732 of 2016 is not at all a sufficient cause for condonation of the inordinate delay of 1225 days in re-presenting the appeal.

12. A reading of the affidavit in support of the application for condonation of delay would show that, the said affidavit had been drafted in a casual manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system. Though, the expression "sufficient cause" employed by the legislature in Section 5 of the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice, as held by the Apex Court in Esha Bhattacharjee's case (supra), lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact. The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play. In the said decision, the Apex Court has stated in categorical terms that, there is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

13. In the instant case, as we have already noticed, the reason stated in the affidavit accompanying to C. M. Application No. 732 of 2016 is not at all a sufficient cause for condonation of the delay of 1225 days in re-presenting the appeal.

14. In the result, C.M. Application fails and the same is accordingly dismissed. No order as to costs.